

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TENNESSEE  
SOUTHERN DIVISION

In re:

No. 00-12712  
Chapter 7

MARY GREEN HARTMAN

Debtor

**MEMORANDUM**

On January 31, 2002, the court entered an order denying two motions filed by Dale F. Cook: (1) a motion to reconsider an order remanding a proceeding to state court and (2) a motion for recusal. On February 5, 2002, Mr. Cook filed a motion to vacate the order denying the two motions. On February 11, 2002, Mr. Cook filed a motion for an extension of time to appeal the order denying the two motions. This memorandum deals with the motion to vacate and the motion to extend the time to appeal.

THE MOTION TO VACATE

A motion to vacate falls under Rule 9023 or Rule 9024. Fed. R. Bankr. P. 9023 & 9024; Fed. R. Civ. P. 59 & 60; *Barger v. Hayes County Non-Stock Co-op (In re Barger)*, 219 B.R. 238, 244 (8th Cir. B.A.P. 1998). The motion to vacate makes essentially the same arguments that Mr. Cook made in his motion to reconsider the remand order and his motion for recusal. Mr. Cook has also filed a brief and a supplement in support of the motion. Neither the brief nor the supplement make any new arguments that are on point; they do nothing to change the court's conclusion that the remanded proceeding is irrelevant

to Ms. Hartman's bankruptcy case. The court will deny a second post-judgment motion when it merely reiterates the arguments made in an earlier motion that was denied. *Servants of Paraclete v. Does*, 204 F.3d 1005 (10th Cir. 2000); *Sea-Land Services, Inc. v. Ceramica Europa II, Inc.*, 160 F.3d 849 (1st Cir. 1998); *Stangel v. United States (In re Stangel)*, 68 F.3d 857 (1st Cir. 1995); *Harrison v. Clemente*, 93 F.Supp.2d 856 (N. D. Ohio 2000); *Barger v. Hayes County Non-Stock Co-op (In re Barger)*, 219 B.R. 238 (8th Cir. B.A.P. 1998).

The motion to vacate mentions some different law but does not explain how it relates to the order that Mr. Cook wants vacated. Certainly the motion to vacate does not adequately set out any of the grounds under Rule 60(b) for setting aside the order. Therefore, the court will deny the motion to vacate.

## THE REMAND ORDER

A motion under Rule 9023 or 9024 to vacate an order generally extends the time to appeal the order until ten days after entry of an order disposing of the motion. Fed. R. Bankr. P. 8002(b). Suppose the court denies a motion under Rule 9023 or 9024, and the same party files another motion under either of those rules. Does the second motion cause another automatic extension of the time to appeal the original order? It does not. The automatic extension applies only to the first post-judgment motion. *Stangel v. United States (In re Stangel)*, 219 F.3d 498 (5th Cir. 2000). Therefore, Mr. Cook's motion to vacate did not automatically extend the time to appeal the remand order until ten days after a ruling

on the motion to vacate. Mr. Cook had ten days after the order denying the motion to reconsider to file a notice of appeal from the remand order itself.

Mr. Cook did not file a notice of appeal within that time, but on February 11 he filed a motion to extend the time to appeal. February 11 was the eleventh day after the order denying the motion to reconsider, but since the tenth day was a Sunday, it did not count for the purposes of Rule 8002. Fed. R. Bankr. P. 8002(a) & (c); 9006(a); *Plotner v. AT & T Corp.*, 224 F.3d 1161 (10th Cir. 2000). Thus, the motion to extend the time to appeal was timely.

The motion to extend the time refers only to the order denying the motion to reconsider, but Mr. Cook was obviously interested in preserving the time to appeal the remand order itself. In the interest of justice, the court will treat the motion to extend the time as applying to both the order denying the motion to reconsider and the remand order itself.

Rule 8002 limits the amount of an extension the court may grant. Fed. R. Bankr. P. 8002(c) The court can allow Mr. Cook ten days after it enters an order granting the extension. Fed. R. Bankr. P. 8002(c).

#### THE ORDER DENYING RECUSAL

The situation appears to be different with regard to Mr. Cook's motion to vacate the order that denied the motion for recusal. The motion to vacate is his first post-judgment motion with regard to that order. As a result, the motion to vacate apparently

caused an automatic extension of the time to appeal until ten days after the court rules on the motion to vacate. Fed. R. Bankr. P. 8002(b).

The court is assuming that earlier order can be treated as two separate orders for the purpose of calculating the time to appeal: (1) an order denying the motion to reconsider and (2) an order denying the motion for recusal. If this assumption is incorrect, then Mr. Cook may need an extension of the time to appeal the order denying recusal because the motion to vacate may not have automatically extended it. From an abundance of caution, the court will grant Mr. Cook an extension of the time to appeal even if it is not legally required.

Rule 8002(c) allows the court to extend the time for 10 days after a ruling on the motion to extend. The court will enter the order denying the motion to vacate the order denying recusal and the order granting the ten day extension to appeal on the same day. This will allow Mr. Cook the same amount of time to appeal – 10 days – that Rule 8002 allows if the motion to vacate did automatically extend the time to appeal the order denying recusal. Fed. R. Bankr. P. 8002(b), (c).

This will produce a simpler outcome for Mr. Cook. He will have ten days after the order to file a notice of appeal from (1) the order remanding the proceeding to state court, (2) the order denying the motion to reconsider the remand order, and (3) the order denying the motion to recuse.

At the same time the court will enter orders denying the motion to vacate. This will give Mr. Cook the same ten day period to appeal those orders.

The court is assuming that orders denying the motion to reconsider and the motion to vacate are appealable. *GenCorp, Inc. v. American Intern. Underwriters*, 178 F.3d 804 (6th Cir. 1999); *Brumley v. Wingard*, 269 F.3d 629 (6th Cir. 2001); see also *Stone v. I.N.S.*, 514 U.S. 386, 115 S.Ct. 1537, 131 L.Ed.2d 465 (1995).

This Memorandum constitutes findings of fact and conclusions of law as required by *Fed. R. Bankr. P.* 7052.

ENTER:

BY THE COURT

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R. THOMAS STINNETT  
UNITED STATES BANKRUPTCY JUDGE

[entered 4/8/02]